

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 IN RE: REALPAGE, INC.,) Case No. 3:23-md-3071
5 RENTAL SOFTWARE ANTITRUST) MDL No. 3071
6 LITIGATION (NO. II))

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8 BEFORE THE HONORABLE
9 CHIEF DISTRICT JUDGE WAVERLY D. CRENSHAW, JR.

10 TRANSCRIPT OF PROCEEDINGS

11 February 13, 2024
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APPEARANCES**For the Plaintiffs:**

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1 The above-styled cause came on to be heard on
2 February 13, 2024, before the Honorable Waverly D.
3 Crenshaw, Jr., Chief District Judge, when the following
4 proceedings were had, to-wit:

5 THE COURT: All right. Well, thank you all for
6 being here. And I appreciate all the work that's gone into
7 the filings that you made on Friday that I had a chance to
8 look at. And, quite frankly, I wanted to talk to the lead
9 lawyers because with a few questions, I'm not real sure we
10 need to get together on Friday, but we can discuss that at
11 the end.

12 So I had a list of things to try to get some
13 clarification on, and I just want to go through those. And I
14 guess I would ask that somebody in the leadership on the
15 plaintiff and defendant sides respond to it -- to my
16 questions.

17 MR. SRINIVASAN: We can do that, Your Honor.

18 MR. COUGHLIN: And this is Patrick Coughlin. We
19 can do that, Your Honor.

20 THE COURT: Okay.

21 All right. So I guess, Mr. Coughlin, I understand
22 that you all want the defendants to produce before discovery
23 starts certain items. And in your submissions, the first
24 sentence says, Plaintiffs served first and second set of
25 requests for production of documents and information requests

1 so you could get the -- essentially information on any
2 governmental regulatory responses defendants have made.

3 So you've already sent those out before discovery
4 started? Is that right?

5 MR. COUGHLIN: We sent them out before.

6 THE COURT: So --

7 MR. COUGHLIN: Of course, they're not -- they're
8 not due yet.

9 THE COURT: Right. But I guess that's what I'm
10 getting to. If you've already sent them out and discovery is
11 going to start by Friday, why do we really need this extra
12 provision that on or before March 15 they produce whatever
13 they've given to DOJ and the FTC and the state Attorney
14 Generals? You're going to get that in the normal course
15 since you've already sent that out.

16 MR. COUGHLIN: I don't disagree that we'll get it
17 in the normal course, Your Honor. But I don't know exactly
18 how it will be identified, or not. I think we should just
19 get it all at once so we know what they produced to the
20 government and have it separate. If they're going to all
21 produce it, you know, on that timeline, that would be one
22 thing. Also, Appendix 1 also asks for other information that
23 we hope would narrow our additional request, and has been
24 approved in at least a couple of courts, like in the cattle
25 litigation, and things like that. So that's why we put that

1 in there.

2 MS. SLAUGHTER: And, Your Honor, this is Stacey
3 Slaughter, and I was prepared to talk about this a little,
4 too.

5 Because under our current case management plan --
6 I mean, discovery will be going on until 2025. So
7 theoretically these could be produced at the very end. And
8 so what we're asking for is this information upfront. This
9 is going to help us set the stage and be able to negotiate
10 other things, like document custodians and search terms and
11 all those things. And the government documents are going to
12 be key in that, as well. And there is no burden to get these
13 right away. And that's what we're really asking for here.
14 And I understand your point. And your point is, you know,
15 we're going to get these anyway. But the difference is we're
16 asking for the production to be made on March 15th, not to
17 wait for some responses and then go through the -- the hoops
18 of their objections and why they shouldn't have to produce
19 this stuff that's already clearly relevant and already been
20 produced. And that's the point, Your Honor.

21 THE COURT: Right. Why wouldn't their production
22 be due, what, within 30 days?

23 MS. SLAUGHTER: Because they may object, and then
24 there's going to be meet and confer, and then there's rolling
25 productions. So, in other words, they wouldn't have to

1 produce these right away; they could just be in the back of
2 stuff that's getting produced. Which again, as I said, goes
3 out to 2025.

4 THE COURT: Well, it's not going to be 2025.
5 So -- that's -- that's not reasonable. Okay.

6 MS. SLAUGHTER: Well, that's why we asked for a
7 date. I mean, that's clearly why we're asking for a date.
8 Because we want to know -- as Mr. Coughlin said, we want
9 these to be this upfront/right now production that helps us
10 set the stage to be able to negotiate all these other things.
11 These are very important documents. They're isolated.
12 They're segregated. They're already --

13 THE COURT: Right. But if you're anticipating
14 that some of the defendants are going to have objections,
15 we're going to have to resolve those concerns early -- at
16 some point anyway. So even if I order it done on March the
17 15th, I guess Mr. Srinivasan and his team will raise the
18 objection, and we'll have our first discovery dispute and get
19 it resolved. And once I resolve it, I'll give them a period
20 of time to produce it. That's going to happen one way or the
21 other, from what I hear you saying are.

22 MS. SLAUGHTER: Well -- and actually, maybe
23 that's -- maybe that's what happens. I mean, if there are
24 going to be objections -- but as long as we get that
25 production date. Right? Because right now we would like to

1 get these on March 15th because it's going to help us
2 identify custodians. And that's one of the reasons why we
3 weren't able to come -- yet -- we still have a placeholder on
4 the number of depositions, or the hours depositions are going
5 to take, because we don't even have any idea who the
6 custodians are going to be in this case yet. And so we're
7 trying to make sure -- everything has to fall into place to
8 keep this case moving efficiently. And that's kind of why we
9 wanted to ask for this information upfront.

10 THE COURT: Yeah, I think we're talking about two
11 different things. Right now -- you're talking about your
12 attachment 1. I'm just talking about the request that they
13 produce essentially DOJ, FTC, any governmental regulatory
14 documents they've already produced. So that's what -- that's
15 what you anticipate -- and I guess, Mr. Srinivasan, why don't
16 you just end the discussion. Do you anticipate some or all
17 of your folks are going to have issues with that? Because I
18 do think, to the extent any of the defendants have already
19 sent materials to DOJ or FTC, you kept a copy of it. It's
20 not going to be that difficult to make a copy of the copy and
21 send it to the plaintiffs.

22 MR. SRINIVASAN: Your Honor, and -- well, I think
23 the issue for us is that it just simply varies from defendant
24 to defendant. And again, I can only -- you know, we've
25 talked to some defendants, but -- but can't speak for all of

1 them. But the issue is -- you know, like we would typically
2 get in litigation, the request comes in -- and I think you're
3 talking specifically about the documents that have been
4 produced to a government agency. You know, people make
5 objections to that. They make objections based on a
6 privilege or a scope or what have you. We just can't
7 anticipate what everybody's going to do. And all we wanted
8 is the flexibility of a formal request -- as you said, Your
9 Honor, you know, folks will serve their objections and
10 responses. And to the extent an objection gets teed up, it
11 will come to you, you'll make a ruling, and then everybody
12 will -- you know, presumably everybody will abide by it. But
13 we're simply asking that we go through that process, rather
14 than sort of an informal just give us everything you sent to
15 the government, and, you know, without an ability to object
16 and think -- you know, work through those issues.

17 THE COURT: Okay. Anything else on the
18 plaintiffs' side before I move on?

19 MR. COUGHLIN: No, Your Honor.

20 MS. SLAUGHTER: No, Your Honor?

21 THE COURT: Then the next thing -- and I don't
22 know if you've got your attachment -- I mean Appendix A. But
23 on page 4 you talk about written discovery limits. And I've
24 read this over and over. You all's -- I'm not seeing --
25 what's the big difference here? What you have on page 4 is

1 identical, as far as I can tell. So what am I missing?

2 MR. COUGHLIN: Well, it's very close, Your Honor.
3 The -- I guess what we didn't want it limited to is if there
4 was a family of named defendants, you know, a subsidiary, you
5 know, that it wasn't just that the interogs just don't go
6 to, you know, let's say the parent, and the four different
7 affiliates don't have to answer. And that was the first
8 point of that. And usually -- and there may be there's no
9 real disagreement there. As I understand that.

10 MS. BOJEDLA: Your Honor, this is Swathi Bojedla
11 for the plaintiffs. If I may clarify this. The -- one of
12 the big disputes is that on the defendants' proposal, you'll
13 see that each defendant is also entitled to serve up to ten
14 individual interrogatories on plaintiffs. Which if there are
15 something like 40 defendants, that would be 400 additional
16 interrogatories on each individual plaintiff. And we're
17 trying to avoid that.

18 THE COURT: So -- yeah, I thought about that. But
19 aren't the defendants going to send interrogatories to those
20 plaintiffs that had rental agreements in their facility? Why
21 would a defendant send an interrogatory to a defendant -- a
22 plaintiff who never slept in one of their apartments?

23 MS. BOJEDLA: The way that this is written does
24 not limit it in that way.

25 THE COURT: Right. But Mr. -- Mr. Srinivasan,

1 don't the defendants have common sense?

2 MR. SRINIVASAN: We do, Your Honor. And you're
3 exactly right. The way it's written is each defendant gets
4 ten on plaintiffs. They're not going to randomly send their
5 ten to some strange plaintiff. We think it's vital that each
6 defendant be able to ask a few questions of, you know,
7 sometimes one or more plaintiffs. And some defendants have
8 more than one plaintiff alleged to be renting from their
9 facility. And so that's all this is.

10 Their request is we get 60 across the named
11 plaintiffs. But that means, you know, one and-a-half
12 interrogatories per defendant, and a defendant has two, for
13 instance, renters, or even if they have one, and they want to
14 ask them just three simple questions, we wouldn't be able to
15 do that.

16 We think -- and just to be clear, it's not that a
17 defendant can ask ten questions -- interrogatories of every
18 plaintiff. It's just total. They get ten. And of course
19 they're going to limit it to the people that they are, you
20 know, in alleged relationship with.

21 MS. BOJEDLA: Your Honor, I wonder if we could go
22 back and speak with the defendants about a way to tighten up
23 this language so as to get those points that you made and
24 that Mr. Srinivasan just expressed?

25 THE COURT: Okay. So you want to give me a new

1 version then on the interrogatory portion?

2 MS. BOJEDLA: I think that would be helpful.

3 THE COURT: All right. Now, moving on then to the
4 request for admission. This is the one where -- yeah. The
5 defendants in their requests for admission -- I'm sorry. On
6 the plaintiffs' side -- you all say, Defendants may jointly
7 serve 30 requests for admission on each named plaintiff, but
8 no more than 60 unique requests across all named plaintiffs.

9 Can somebody on the plaintiffs' side -- what are
10 you trying to say there? I'm not getting the distinction.
11 What do you mean by unique requests?

12 MS. BOJEDLA: Sure. So the way -- what we were
13 trying to plan for here was that, for example, you know,
14 defendants didn't serve 30 unique RFA's on each of the named
15 plaintiffs so that there were somehow 180 or 210, or whatever
16 the number is, RFA's that were totally different across all
17 of the plaintiffs. And what we're trying to basically solve
18 for is, you know, ask an RFA of one plaintiff on one issue,
19 that kind of applies to the whole case, and you do that 30
20 times across, and then you ask another plaintiff another
21 issue that kind of applies to the whole case, you do that 30
22 times. So we were trying to kind of streamline this so we
23 were having the same (indiscernible) across the same
24 plaintiffs.

25 THE COURT: Okay. That also sounds like one you

1 all can get together and come up with some more precise
2 language.

3 MS. BOJEDLA: I think we can, Your Honor. I think
4 we can. I think we're pretty aligned on not trying to create
5 an excessive amount of written discovery here.

6 THE COURT: All right. So I'm going to hold off
7 on that one.

8 The next thing you all have here is a difference
9 on whether it's going to be full completion or substantial.
10 My order's just going to say completion of document
11 production by March 28th, 2025.

12 MR. SRINIVASAN: Your Honor, if I can be heard on
13 that -- it sounds like you're pretty firm on that. But, you
14 know, for us it's just a matter of getting everything -- you
15 know, be kind of doing the vast majority of it, and then you
16 have sort of things that fall out of privilege and a cleanup
17 thing here or there, and that's all we wanted to give
18 ourselves, that buffer, and that was the reason for
19 substantial completion.

20 THE COURT: Okay. Well, we've got some excellent
21 lawyers here. And I think y'all will be able to work it out.

22 So let me share a couple of things I added to the
23 case management order that shouldn't be a surprise. But on
24 the section regarding summary judgment, I added in there --
25 which is required by the local rules -- that the

1 plaintiffs -- whoever makes a motion for summary judgment,
2 you have to file your motion, your statement of undisputed
3 facts and your memorandum. So you all left out the statement
4 of undisputed facts. And then, obviously, when they respond,
5 they have to respond to the statement of undisputed facts or
6 add additional facts, as the local rules allow.

7 Also, on the mediation and alternative dispute,
8 that's all fine with me. However, I am going -- I am adding
9 that you all -- that all the parties should anticipate that
10 you're going to engage in multiple good faith mediation or
11 direct case resolution efforts with each other. So I'm
12 not -- I'm not right now requiring you go through mediation
13 because it seems like some of the defendants are talking
14 directly to the plaintiffs, and in fact that's resulted in
15 some settlements, which is good. But I am adding a statement
16 that there are going to be multiple good faith mediations or
17 case resolution efforts by your August 2027 deadline.

18 Also, I'm adding that on or before April the 30th
19 all parties will certify to the Court they've either engaged
20 in mediation or engaged in substantive case resolution
21 settlement discussions without a third-party.

22 And finally I'm going to add that all the parties
23 are going to be required to engage in multiple good faith
24 mediation or case resolution every six months during the life
25 of the case. I'm also adding specific case management

1 conference dates from March to December of this year. Those
2 are going to be at 1:00 on the second Friday in every month,
3 if I calculated it right.

4 Now, what you haven't given me that I specifically
5 talked to Mr. Coughlin and Srinivasan about is the joint
6 status report form. Remember I wanted that to be a living,
7 breathing document.

8 So how are y'all coming on that?

9 MR. COUGHLIN: This is Patrick Coughlin. We fell
10 down on that, Your Honor. We were looking at all the stuff
11 that we were submitting with the protective order and the ESI
12 protocol, and we were thinking that -- that as far as getting
13 this stuff in, that -- at least my own thoughts were -- that
14 we were complying with what Your Honor needed now. I
15 understood what you --

16 THE COURT: Yeah.

17 MR. COUGHLIN: -- what you wanted, that we would
18 build on it as we go forward. And, actually, Mr. Srinivasan
19 and I could talk about that and get something in --

20 THE COURT: Okay.

21 MR. COUGHLIN: -- by this Friday in -- because it
22 sounds like we're not going to be actually getting together.

23 THE COURT: Well, I don't think so. But I've got
24 a couple more items to go. Y'all did a great job on this.
25 So I think -- I'm going to be able to get you something out.

1 If you could get it -- well, if you -- if you and
2 Mr. Srinivasan could either do it or get a subset of your
3 all's respective teams to look at -- I do think y'all need to
4 put some -- I'm sure you will -- put some thought into it
5 down the road. I don't think you want me trying to do it
6 because I can't anticipate the kind of things y'all might
7 want to report on. And that's why I wanted you all to take
8 the first -- the first cut with it. So --

9 MR. COUGHLIN: We'll do that, Your Honor.

10 THE COURT: Okay. So now let's go to your --
11 y'all really did narrow everything down. So let's go to the
12 ESI protocol.

13 And I thank you for providing the full documents.
14 Quite frankly that made it a lot easier to understand the
15 difference once I get to read everything that's -- that's
16 there. And I guess I'll go to the defendants.

17 I guess what I'm -- look like the difference here
18 is -- is when you have emails that have been -- there are
19 multiple versions of -- well, it's the same version of the
20 email, but the string of who's received it has gotten longer.
21 You all just want to make one entry on the privilege log for
22 that email. And I guess I wanted to hear a little bit more
23 because -- what your thinking was there.

24 MR. SRINIVASAN: Yes, Your Honor. This is
25 Mr. Srinivasan. I don't know if there is -- you know,

1 various people on our team negotiated these other documents.
2 And I think it was Mr. Medlock, who is not on this call, who
3 was the chief negotiator for our side, but I think -- you
4 know, I'll -- I'll take -- give it a high level shot, which I
5 do understand, and others, hopefully, on our side -- on the
6 defendants' side should chime in if they have more detail.
7 But at a very high level, Your Honor, we have -- our
8 experience has been on a privilege log if you have a 12, you
9 know, email chain email, with 12 emails, or more, or whatever
10 it is, three or four, going back and forth, that when that
11 whole thread appears, that we provide all of the information
12 on one entry rather than 12 entries, which is onerous and
13 burdensome. So in the one entry you would still get the
14 various participants on that chain. You wouldn't just
15 isolate one out of the 12 emails. And, you know, the
16 description of the subject matter, which again if the subject
17 matter meanders across topics, then that would all be -- all
18 the subject matters would be noted, and the dates, the range
19 et cetera. In other words, you're getting all the privilege
20 log related information but in one entry versus 12, which we
21 just find to be unnecessarily onerous and burdensome.

22 THE COURT: And I guess --

23 (Overlapping speech.)

24 THE COURT: And I kind of see that point, but as I
25 read -- read the language you all are proposing here, if

1 the -- if the plaintiff, I guess, made a request, you would
2 then provide a -- a more fulsome response to that string of
3 emails.

4 MR. COUGHLIN: Your Honor, this is Patrick
5 Coughlin. Then we would have to give reasons -- we would get
6 in a big fight, just as an example. Let's say the CFO and
7 CEO are at the end of a thread, and they looped in, you know,
8 the in-house general counsel. Well, all's we know -- we
9 don't know when the general counsel was looped in. We don't
10 know if outside -- when outside counsel may have been looped
11 in or not. We don't know who the first, you know, two emails
12 are between or anything. And so what happens is the burden
13 comes back to us to actually provide reasons why this should
14 not be privileged when we don't have any more information
15 than -- than the 15 people involved in the email. And it may
16 be that the in-house general counsel and outside counsel are
17 both listed there. They're not going to be listed on each
18 individual email that's drawn. They're just going to be
19 listed. We just got a production in another case where 90
20 percent of the documents had a privileged and confidential
21 stamp on them and attorneys's eyes only. And it was just the
22 common practice of the company to list that. And so that's
23 why we think that -- it shouldn't be our burden. If they
24 think something's privileged, you know, break it out of the
25 email and mark it as privileged and confidential.

1 MS. BOJEDLA: Your Honor, this is Swathi Bojedla.
2 I would just add, we really think that this is going to
3 create less disputes and not more, for us to be able to know
4 exactly what's being withheld and why, as opposed to having
5 to guess what's going on in an email chain, go back to the
6 defendants and ask for all of the emails in the chain and
7 then argue from there.

8 MR. SRINIVASAN: Respectfully, Your Honor -- I
9 mean, certainly I don't know that it would result in any
10 fewer disputes. What I do know is it's going to result in a
11 lot more needless work on our side, and particularly, you
12 know, given deadlines, you know, to the extent it's a full
13 completion deadline. These things all add up and having to
14 do these massive privilege logs for lengthy chains, which,
15 you know, in today's modern practice is common. This is not
16 something we're talking about that's a one-off issue. It
17 would be substantially burdensome. And I guess I still don't
18 understand the issue of why something is being hidden here if
19 there's a particularly long chain or there's a -- there's a
20 log entry that has a number of people on it and they want to
21 ask us about it, we said we would accommodate that. And it
22 seems like a good compromise as opposed to a prophylactic
23 rule that says you've got to do each one individually.
24 You're also going to have, you know, very, very, very long
25 privilege logs that will be difficult to use by anybody.

1 MR. COUGHLIN: But we won't know where the -- we
2 won't know where the attorney comes into it or at what point
3 in that long email chain, you know, is it that the attorney
4 comes into it or that you're claiming the attorney/client
5 privilege on. You're not -- you're not telling us -- or are
6 you? Are you saying that you would break that out? That
7 individual email between let's say two discrete people within
8 that let's say 15 person email chain?

9 MR. SRINIVASAN: Absolutely. Let me be clear
10 about it. Leaving aside, you know, sort of the rare cases
11 where -- or, you know, exceptions where there can be
12 privileged discussions where an attorney is not present, if
13 we had a long chain where the attorney didn't join until the
14 middle of it, the previous portion would not be part of the
15 same chain. That wouldn't likely even be privileged. We are
16 not intending to hide nonprivileged emails within a broader
17 chain. In other words, the only chains that you're going to
18 see that we are proposing to log together is where there's
19 the attorney throughout. Every -- every email is -- has a
20 privilege assertion attached to it within that chain. Every
21 email will have an attorney on every constituent email, again
22 absent, you know, those rare cases where somebody's acting on
23 instructions of an attorney. But, yes, that -- so these
24 chains are -- are not going to include nonprivileged emails
25 as a constituent component. So there's nothing you will

1 lose. There will be no questioning of when the attorney got
2 involved. The attorney got involved at the beginning, which
3 is why the entire chain is privileged.

4 (Multiple people speaking)

5 MS. BOJEDLA: Your Honor, if I may step in for a
6 moment. You know, I appreciate that -- the representation
7 that only documents that are actually privileged because they
8 have an attorney on them are going to be withheld. You know,
9 we all litigate privilege logs for months or years on end.
10 And that is just not always the case. We often have disputes
11 as to whether an attorney is operating in their business or
12 legal capacities. And so it's just -- that's why the rules
13 require the sort of specificity and the case level requires
14 sort of the specificity for anything that is being withheld.
15 You know, we need that information to evaluate the claim and
16 decide whether to challenge it. And, frankly, you know, I
17 understand the burden that's being made. But privilege logs
18 are typically made up of metadata, and then the last field
19 that's filled in, and if the privilege is the same for every
20 document in the email chain, then they will just extend that
21 same -- they will copy and paste that same argument all the
22 way down the log, and the only additional burden is the
23 metadata that's being added in, which is not a burden at all.
24 So I understand the concern about wanting to have shorter
25 privilege logs, but shorter privilege logs actually

1 prejudices us, and there is not a huge amount of additional
2 burden in creating those metadata logs, plus the additional
3 description that would be the same for every document --

4 THE COURT: Well -- well, thank -- I want to thank
5 everybody. That's helpful.

6 What I want to do, though, is Mr. Srinivasan why
7 don't you get to your point person on this issue and file
8 with the Court an example of such an email that -- and how it
9 might contain some attorney/client privilege in parts of the
10 email string and other parts not. So, one, the Court has
11 something that it can look at, and the plaintiffs can as
12 well, to see if this might -- might work.

13 I am sensitive that there's going to be a lot of
14 documents in this case. And right now we're working in a
15 vacuum, but to the extent you could get with your person and
16 give me a couple of examples, file them. Obviously they're
17 fake examples. But something that you think realistically
18 come up. Can you get me that maybe by tomorrow 3:00
19 Nashville time? And share it with the plaintiffs. And then
20 that might give me a better understanding of what you
21 propose.

22 MR. SRINIVASAN: We will do that, Your Honor.

23 THE COURT: Okay. Now, the next thing on the ESI,
24 I will give the gold star award to Mr. Coughlin. I think
25 it's a great idea, but I -- I don't think it's really

1 feasible at this point regarding the presumption of
2 authenticity. But I do think it's a great idea. In fact,
3 I'm -- I think y'all got enough to work in this case -- I do
4 kind of wonder why the defendants wouldn't want to know from
5 the beginning are my documents authentic. But I can recall
6 in my practice, I had a case where one of my clients thought
7 he was doing -- I don't know what he thought he was doing --
8 but messed with some documents and -- that I thought were
9 authentic and they weren't. But I like the idea,
10 Mr. Coughlin, but I don't think we should try it in this case
11 in terms of dealing with the issues of authenticity.

12 MR. COUGHLIN: I understand, Your Honor. It's a
13 blanket thing. I just had a trial last week -- two weeks ago
14 in Connecticut and the issue came up. And so we thought we
15 would put it in here.

16 THE COURT: You know, since the time I've been on
17 the bench, I think in all the trials I may have had two real
18 objections to authenticity. It's usually not an issue.

19 Okay. So that takes me through -- that takes me
20 through your case management order, the ESI. Oh. Oh, yeah.
21 So that takes me to your protective order.

22 UNIDENTIFIED SPEAKER: Page --

23 THE COURT: Who is that? Who is speaking?

24 MR. COUGHLIN: This is Patrick Coughlin. Page 8 I
25 think, Your Honor.

1 THE COURT: Well, yeah, I want to go to page 8.
2 I'll start with the defendants. I'm not quite understanding
3 what you all want to do, because in your submission you said
4 you want advance notice, and then as I read through your
5 proposal, there's no advance notice language there for either
6 confidential or highly confidential information. So I'm --
7 I'm looking at page 8 of your protective order, paragraph 7,
8 witnesses at hearings. And help me walk -- I think
9 something's been left out. Because I know you want some kind
10 of advance notice, and then some kind of express
11 authorization but I'm not -- I can't understand what you want
12 because of the language here isn't descriptive.

13 MR. CASAS: Sure, Your Honor. This is Greg Casas
14 from Greenberg. My team handled the protective order.

15 THE COURT: Great. Great. Go ahead.

16 MR. CASAS: Thank you, Your Honor. And I'm
17 looking at page 8 right now of the protective order. I'm
18 also looking at Appendix C to the filing that we made on
19 Friday. And we do want advance notice.

20 The issue -- you know, and we looked at several
21 other protective orders from other larger antitrust cases.
22 And the advance notice, Your Honor, ran all the way from, you
23 know, the day of the deposition, at the deposition, to three
24 or five days before the deposition giving notice to the
25 producing party so that the producing party can decide

1 whether or not there's any objections. And we tried to
2 engage with the plaintiffs. It was -- from their
3 perspective -- which is fine -- they just said that advance
4 notice was a nonstarter. So we couldn't really engage in any
5 negotiation on that one point, though we were able to
6 negotiate and come to terms on everything else, which I
7 thought was a great fete from our perspective.

8 And so we are just trying to get, Your Honor, some
9 kind of advance notice, whether it be the day before, three
10 days before, five days before, what have you. Because what
11 we don't want is when you're dealing with a case like this,
12 when you've got alleged competitors and you've got an alleged
13 sharing of nonpublic information, what we don't want is
14 company A's representative shown company B's nonpublic
15 information when there really is no basis for that
16 information to be shown unless the producing party thinks
17 that there's no objection for that document to be used in
18 that manner.

19 THE COURT: Okay. Well, we could be more --
20 Mr. Casas, you can help me more if you go to page 8,
21 paragraph 7. I'm looking at your proposal. Do you see your
22 proposal?

23 MR. CASAS: Page 8, paragraph 7, Witnesses At
24 Hearings and Depositions.

25 THE COURT: Right. And I've got the annotated

1 version. Do you?

2 MR. CASAS: I believe so. I think we have the
3 same document, Your Honor.

4 THE COURT: Okay. Good. So we come down -- so
5 everybody's going to sign Attachment A. Right? For any
6 confidential or highly confidential documents. Right?

7 MR. COUGHLIN: That's right, Your Honor.

8 MR. CASAS: Yes, Your Honor. That's correct.

9 THE COURT: And then your next sentence says,
10 Disclosure to such person is limited to, one, the portion of
11 the document of which the person has knowledge. You're not
12 asking for notice about that, are you?

13 MR. CASAS: No, Your Honor.

14 THE COURT: Okay.

15 MR. CASAS: If you look at the red line down,
16 there was an option 2 and an option 3.

17 THE COURT: I don't have a red line version. So
18 that's what I'm missing. I can't tell what your proposal is.

19 MR. CASAS: I understand now.

20 THE COURT: All I've got is 1 makes sense; 2, the
21 portion of the document in which the person has knowledge,
22 you have no problem. And then it says "or" 3, and it starts
23 off "counsel". And that doesn't -- that doesn't -- that's
24 not consistent with the rest of the sentence.

25 MR. CASAS: Right. And so counsel for the

1 producing party expressly authorizes in writing disclosure of
2 the information to the witnesses prior to its disclosure.
3 And, Your Honor, I agree there's no deadline in there.
4 There's no date in there. And so that was that last point
5 that I was speaking to, which is if a document doesn't fall
6 into -- or if a document or a witness doesn't fall into
7 categories 1 or 2, and yet a questioning counsel does want to
8 ask a witness about a document outside of subcategories 1 or
9 2, he has to -- he or she simply has to ask the producing
10 party whether they authorize or object to the use of that
11 produced document in the deposition.

12 THE COURT: So why doesn't -- I'm sorry.

13 Why doesn't Attachment A take care of that? "And
14 not disclose any such confidential or highly confidential
15 information to any other person, firm or concern." If
16 they've already signed that, what are you -- I don't
17 understand the -- what you're trying to cure.

18 MR. CASAS: Well, I think the issue there is
19 Attachment A doesn't address the fact -- or doesn't address
20 the scenario where witness Jane Smith from Lincoln Property
21 is being deposed, and counsel for the plaintiff wants to ask
22 Ms. Smith about a document produced by another defendant that
23 contains that other defendant's highly confidential
24 information. And Ms. Smith has never seen it, never heard
25 about it and never -- didn't even know it existed. We just

1 think that, while plaintiffs may have the right to ask
2 questions of Ms. Smith about that document from the other
3 defendant, the producing party, that other defendant needs to
4 be told about that so that they can either file for
5 protective order or agree that there is no -- there is no
6 objection to the use of their highly confidential information
7 in the other party's deposition. And Attachment A does not
8 address that concern.

9 THE COURT: Why not? It says, "and not disclose
10 any such confidential or highly confidential information to
11 any other person, firm or concern." So even if they look at
12 it, they can't share it with anybody.

13 MR. CASAS: Well, Your Honor, I understand what
14 you're saying. It's just that, given that that document now
15 will be in the deposition record and disclosed to a number of
16 people who might not otherwise have seen it, there is a
17 concern from our part that these deposition questions -- or
18 these documents rather are going to be used in a manner
19 that -- you know, that the protective order really does
20 prevent or should prevent from the defendant's perspective.
21 And so we just want the plaintiffs, or the defendants, if
22 they're going to be using a document that is confidential or
23 highly confidential, and they want to use it with regard to a
24 deposition that is of a person or of an entity that did not
25 write or produce that document, that the party that produces

1 it just be given notice of that use of that document so that
2 they can either object and come to Your Honor and ask for
3 protective order of that document or they can agree that that
4 document can be used. It's a very -- I mean, we've seen that
5 actually, Your Honor, not just in antitrust cases, but there
6 are two protective orders that your magistrate's, Your Honor,
7 have approved that also have this -- these kinds of
8 provisions. And so that's what we're also trying to -- to
9 just have put into this protective order here. If you look
10 at the Shipman case or the Top Tobacco case, both of which
11 was -- one was with Magistrate Judge Frensley, and the other
12 one was with Magistrate -- another one of your magistrate
13 judges there, Your Honor, Judge Holmes, both of which have
14 those provisions that allow for the use of the documents but
15 only in a situation where notice is provided to that
16 producing party.

17 THE COURT: So is this a party that is not a -- is
18 this -- is this an entity that's not a party to this lawsuit?

19 MR. SRINIVASAN: It could be, Your Honor. It
20 could be an entity that is a part of the lawsuit. The issue
21 is a use of a highly confidential or confidential document
22 with a witness that the document was not drafted by that
23 witness or prior received by that witness through the normal
24 course of business or was -- or is a document that that
25 witness's entity has no knowledge of, we just don't think

1 that a document can be used randomly unless the producing
2 party has agreed to the use of that document in advance.

3 MR. COUGHLIN: And, Your Honor, this is Patrick
4 Coughlin. It's just a way to prevent us from using -- now we
5 have to get written notice -- first of all, we're not going
6 to be using documents from one unrelated entity, you know,
7 with somebody else at another unrelated entity. You know,
8 that -- that's absurd. We have to have a good faith basis
9 that the person has or should have knowledge of that
10 document. In other words, they would have received it, you
11 know, either in a communication between two defendants or
12 something like that. We're not just going to be taking
13 somebody's internal information and showing it, you know, to
14 another defendant and say, hey, do you know this? And then
15 number two, it should be a person that we think has
16 knowledge, right? They -- the way they have written it, the
17 person has to have knowledge, i.e., received it in the normal
18 course, according to Mr. Casas. Right? And then we're
19 supposed to give counsel, you know, notice of that before we
20 go take the deposition. So that's going to prevent us from,
21 you know, using, like, many documents that we would just go
22 in and ask the person, you know, from the entity that -- that
23 somebody else authored it or that they were somehow in part
24 of the email chain, about that document. This just
25 completely hampers us, you know, from conducting a

1 deposition and gives them basically a road map if they, you
2 know, stamp a lot of documents confidential or highly
3 confidential, and we think that -- you know, we're certainly
4 willing to do the Attachment A and have them sign it ahead of
5 time, and they can't disclose it to anybody else, and we have
6 to have a good faith effort. So we think that the way they
7 have written it basically prevents us from, you know,
8 conducting the depositions in the way that we should.

9 MR. SRINIVASAN: Your Honor, if I can reply.

10 THE COURT: Well, let me ask you a question
11 instead.

12 Mr. Casas, why wouldn't during -- if it comes up
13 during a deposition, why can't the parties and the lawyers
14 agree to put that portion of the deposition under seal until
15 it's been addressed by me?

16 MR. COUGHLIN: We agree.

17 MR. CASAS: Your Honor, I guess that could work in
18 certain circumstances, but the focus here is -- and we're not
19 talking about a -- in my client's case, a situation where a
20 witness who is employed by Lincoln Property is being deposed
21 and plaintiffs want to use a highly confidential document
22 produced by Lincoln Property. That's not what this prior
23 notice is addressing, but, rather -- let's say there is a
24 deposition of a witness from Lincoln Property and the
25 plaintiffs want to use a highly confidential document that

1 was produced by another defendant. That's the situation
2 where we want to make sure that for that document the
3 plaintiff have gone to the producing party of that document
4 and said we're going to use this -- we're going to use your
5 document, defendant X, when we depose the witness from
6 Lincoln. And we want to make sure that there is some sort of
7 prior discussion just between the plaintiffs and that
8 producing party. We're not saying that they need to talk to
9 the entire defense group about that, but rather just the
10 producing party to see whether the producing party, defendant
11 X in this -- my analogy, or my example, has any problem with
12 the use of a highly confidential document when deposing, in
13 that situation, Lincoln Property witnesses.

14 We think -- and so doing what Your Honor is
15 saying, that it's put under seal until you can address it --
16 you know, these -- it's just -- it's something that we can
17 work out a lot quicker, I think, if it's done before the
18 deposition. And it doesn't have to be in writing. It could
19 be email. It can just be a phone call. But we think it will
20 be much more streamline, just like it is in other cases
21 where, you know, this kind of a prior notice has been used,
22 which would be in the Persian Gulf case *In Re: Local TV*
23 *Advertising*, the tobacco case, Your Honor, in front of --
24 from your bench as well as the Glenda Shipman case. It's
25 been done before, and it has worked very well. And that's

1 what we're trying to accomplish here.

2 THE COURT: Okay. Well, let me suggest that maybe
3 -- I'm not convinced. I think Attachment A has meaning, and
4 the idea that we're just going to ignore what somebody has
5 said in Attachment A is not something I'm willing to accept.
6 I've offered myself up to resolve it so you all can do the
7 deposition and get it done and then bring it to me if it
8 needs resolution.

9 So with that in mind, Mr. Casas -- and I hear your
10 arguments and they're -- they're sound -- maybe -- maybe you
11 and the plaintiffs talk to come up with some other agreeable
12 language. But I'm not sure I can go with what you're
13 proposing here. And again, I don't have the red line
14 language so I really don't even know what you're proposing.

15 MR. CASAS: I understand, Your Honor. Yes, I and
16 my team will get with Mr. Coughlin and his group and we'll
17 see if we can come up with something that's mutually
18 agreeable, Your Honor.

19 THE COURT: All right. So that takes care of the
20 protective order.

21 Oh, also you all reference something called the
22 Order of Deposition Protocol. And I don't think I've seen
23 that.

24 (Overlapping speech.)

25 THE COURT: Everybody's talking so I can't hear

1 anybody.

2 Mr. Coughlin, do you have the Order of Deposition
3 Protocol?

4 MR. COUGHLIN: It has not been submitted yet.

5 THE COURT: Okay. Are y'all still working on it?

6 MR. COUGHLIN: I think we're done working on it.
7 So I think we're ready to submit it, and we will I think
8 later today.

9 THE COURT: Okay. Well, again, that's -- again,
10 these are the things I had concerns with. And I don't
11 know -- let me hear what you all think. But I can wrap this
12 up without you all spending all this money flying to
13 Nashville. I think you're going to have plenty of
14 opportunities to come to Nashville.

15 MS. BOJEDLA: Your Honor, this is Swathi Bojedla.
16 Just on the issue of the written discovery limits, I don't
17 want to hold up Your Honor getting a scheduling order out.
18 So if it would be possible, could we include that in our
19 forthcoming negotiations and proposed order on deposition
20 limits and --

21 THE COURT: Oh, that's -- you need not worry.
22 You're not going -- because I want all that by tomorrow at
23 3:00 as well.

24 MS. BOJEDLA: Okay. Okay.

25 THE COURT: Okay. And then the last thing I have

1 here -- and you can think about this. Meet and talk to each
2 other. But I'm taking seriously what's in your joint
3 submission about the structured data discovery. And I want
4 to give that some more thought of what the Court needs to do
5 to be prepared. So I would really appreciate if both sides
6 would come up with two names that the Court might employ
7 either as a special master or a court-appointed expert, but I
8 want to get ahead of you all so that when these issues come
9 up I'm -- I'm ready to rule. So I'm going to ask -- you
10 don't have to do that by Friday. But give it -- give it --
11 give it a thought. I would like the plaintiffs to give me
12 two people I should talk to to be the special master or
13 court-appointed expert on structured data discovery, and then
14 get the defendants to give me two nominees so I can look into
15 that. And I rather have them ready than need them and not
16 have them ready.

17 So that -- that's all I had. Do we need to go
18 over what I need from everybody by 3:00 tomorrow?

19 MR. COUGHLIN: Yes. Just to be helpful.

20 MR. SRINIVASAN: Yes.

21 THE COURT: So I think you're going to get me
22 revised language on the interrogatories, revised language on
23 the requests for admission, perhaps revised language on the
24 use of confidential and highly confidential documents in --
25 when the witness does not have knowledge of that particular

1 document in the scenario that Mr. Casas explained. And. . .

2 MR. SRINIVASAN: Your Honor wanted an example --

3 THE COURT: Oh, yes. I wanted examples of the --
4 oh, good point. Those are the four things.

5 MS. BOJEDLA: And, Your Honor, you don't need
6 anything more from us on the schedule beyond those items,
7 right?

8 THE COURT: On the case management order? I think
9 I'm good. I've got a pretty good working draft incorporating
10 all of you all's hard work here. So it's not -- it's not
11 changing -- I mean, y'all are very close on this. So I think
12 I've got a version we can get out. What I don't have, I
13 guess, is the final version -- I guess -- for my approval,
14 entering an order approving it on Friday for both the ESI and
15 then the protective order and then the deposition protocol.
16 That's what I don't have finalized.

17 MR. COUGHLIN: And, Your Honor, I'm kind of loathe
18 to bring up some. But one of the issues, or kind of a main
19 issue, that the plaintiffs had is that we wanted to at least
20 complete discovery before we do the expert reports for the
21 class CIRT. We also thought that while class CIRT will go
22 ahead of summary judgment, that the expert reports and the
23 merits summary judgment reports so overlap that to the extent
24 that we can just do both of those at one time, we would hope
25 that we could, and so the Daubert motions could be done on

1 that. If the defendants have raised the issue about whether
2 they want to add additional experts for summary judgment, I
3 don't think we address that in the back and forth. But
4 certainly they could, you know, at that stage if we're past
5 class certification. So that was just an issue I wanted to
6 flag that that's a big issue between the parties.

7 THE COURT: It is a big issue. You gave me a lot
8 to look at. I think I'm pretty much there, but I want to
9 complete reading some of the citations that you both
10 provided. But I don't think I need anything more from you
11 all on that.

12 MR. COUGHLIN: Thank you, Your Honor.

13 THE COURT: Okay. So I'll start with the
14 plaintiffs. And Ms. Slaughter, as well as Ms. Bojedla,
15 anything else? Is there anything -- any other reason we need
16 to get together on Friday?

17 MS. SLAUGHTER: No, Your Honor. As much as I like
18 coming to Nashville, I think you have covered everything, as
19 far as I know. Unless Ms. Bojedla has anything else.

20 MS. BOJEDLA: No, Your Honor. Thank you so much.

21 THE COURT: And then, Mr. Srinivasan and
22 Mr. Hittinger and Mr. Casas -- and Sam Funk hasn't said a
23 word. Is he still -- is he asleep?

24 MR. FUNK: I am still here, Your Honor. I've just
25 been riveted and thought I would let the smarter people --

1 THE COURT: Well, if you're riveted with this
2 discussion about discovery, you're about to go to hog heaven.

3 MR. FUNK: Your Honor, this is Sam Funk. We do
4 have one issue.

5 Jay, do you want to address the personal
6 jurisdiction briefing or whether anything additional is
7 needed on that?

8 MR. SRINIVASAN: You just did it, unless Judith
9 wants to -- Your Honor, there was supplemental submissions on
10 the personal jurisdiction issue that was filed on Friday.
11 And the question was did you want to hear oral argument on
12 it. I think the answer sounds like no. But that's our
13 question.

14 THE COURT: You're a smart lawyer. I think I have
15 all I need on that. I think I've got all I need. We'll get
16 you something out pretty soon.

17 (Overlapping speech.)

18 THE COURT: Well, thank you all again. Y'all did
19 collectively great work on this. You really narrowed down
20 these -- we've got very few issues and I know it's because
21 we've got good lawyers who are working hard. So I appreciate
22 it. Take care.

23 (Court adjourned.)
24
25

1 REPORTER'S CERTIFICATE

2
3 I, Lise S. Matthews, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held in open court on February 13, 2024, in the
8 matter of In Re: Realpage, Inc., Rental Software Antitrust
9 Litigation (No. II); that said proceedings in connection with
10 the hearing were reduced to typewritten form by me; and that
11 the foregoing transcript (pages 1 through 37) is a true and
12 accurate record of said proceedings.

13 This the 22nd day of April, 2024.

14
15 /s/ Lise S. Matthews
16 LISE S. MATTHEWS, RMR, CRR, CRC
17 Official Court Reporter
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